

Sunset Public Hearing Questions for
Board of Dispensing Opticians
Created by Section 63-14-101, *Tennessee Code Annotated*
(Sunset Termination June 2021)

Enabling Statute, Purpose, and Rules and Regulations

1. Please provide a brief introduction to the board including information about its purpose, statutory duties, staff, and administrative attachment.

The Board of Dispensing Opticians was created in 1955 by an act of the State Legislature. Its mission is to safeguard the health, safety, and welfare of Tennesseans by requiring those who practice the profession of opticianry within this state be qualified. The Board interprets the laws, rules, and regulations to determine the appropriate standards of practice in an effort to ensure the highest degree of professional conduct. The Board is authorized to issue licenses to qualified candidates who have completed appropriate education and successfully completed required examinations. The Board is responsible for the investigation of alleged violations of the Practice Act and rules and is responsible for the discipline of licensees who are found guilty of such violations.

Opticians are licensed by examination.

The administrative staff of the Division of Health Related Boards supports the Board by issuing licenses to those who meet the requirements of the law and rules. Renewal notices are mailed from Board's administrative office approximately sixty (60) days prior to the expiration of the license to the current address on record. For those licensees who have opted in for electronic notification, an email will be sent to the email address on file approximately seventy (70) days prior to the expiration date of the license. Licenses can be renewed on-line seventy (70) days prior to expiration. Failure to renew by the expiration date may result in a fine.

As a response to the difficulties encountered by licensees as a result of COVID-19, the Governor issued an Executive Order in March 2020 extending license renewal dates. As a result of the Executive Order, the Board extended the renewal date from sixty (60) days to one hundred (100) days. Upon expiration of the Executive Order in August 2020, the renewal notices dates returned to sixty (60) days for regular mail and seventy (70) for email notification.

The Board meets four (4) times per year. A quorum of four (4) members is required to conduct business. All members of the Board are appointed by the Governor to serve four (4) year terms. The Board consists of five (5) licensed opticians who must each have five (5) years of experience and one (1) member who is a health care consumer.

2. Have the board promulgated rules as authorized in Section 63-14-101(c)? If yes, please cite the reference(s).

Yes, since the Board's inception, there have been rules promulgated as authorized by statute (Rule Chapter 0480-01). The Board has not had any rule changes enacted in the last two fiscal years.

Board Organization

3. Provide a list of current board members and explain how membership complies with Section 63-14-101, Tennessee Code Annotated.

Name	Profession	Role	Appointed	Expires	Consecutive	Demographics
William DeCrow	Dispensing Optician	Member	04/05/2018	03/31/2022	Yes	60+ years, Non-Minority, Male, West TN
Janet Perry Martinez	Dispensing Optician	Member	08/07/2017	03/31/2021	No	Under 60 years, Non-Minority, Female, East TN
Jonathan Winnegrad	Dispensing Optician	Member	06/20/2019	03/31/2023	No	Under 60 years, Non-Minority, Male, East TN
Brandy Miller	Dispensing Optician	Member	03/08/2017	03/31/2024	Yes	Under 60 years, Minority, Female, West TN
LeRhonda Walton-Hill	Dispensing Optician	Member	06/20/2019	03/31/2023	No	Under 60 years, Minority, Female, Middle TN
Vacant		Consumer Member				

4. Are there any vacancies on the board? If so, please indicate how long the position has been vacant and explain steps that have been taken to fill any vacancies.

There is one vacancy. The Consumer Member position has been vacant since the expiration of the last Consumer Member on 03/31/2014. Steps taken to fill the vacancy have been to

make notice to the Governor's Office of the vacancy, as the Governor is the appointing authority.

5. How many times did the board meet in each of the last two fiscal years?

The Board met four (4) times in Fiscal Year 2019. The Board met four (4) times in Fiscal Year 2020.

6. How many members were present at each meeting? Please note meetings where the board did not have a quorum.

Fiscal Year 2019		
Meeting Date	# Board Members	Quorum
07/25/2018	5	Yes
10/24/2018	5	Yes
02/27/2019	5	Yes
04/24/2019	4	Yes

Fiscal Year 2020		
Meeting Date	# Board Members	Quorum
08/21/2019	5	Yes
10/16/2019	5	Yes
01/29/2020	4	Yes
05/18/2020	4	Yes

The Board was scheduled to meet on April 22, 2020, however, due to the COVID-19 pandemic, the Board rescheduled and conducted a brief teleconference meeting on May 18, 2020 for one specific time-sensitive agenda item, and then heard all other agenda items at the first meeting of Fiscal Year 2021, which was held on July 22, 2020 via the WebEx virtual meeting platform.

Financial Information

7. What were the board's revenues and expenditures for the last two fiscal years? Does the board carry a reserve balance? If so, please provide additional relevant information regarding the reserve balance, including whether the board is self-sufficient.

For fiscal year 2019, the Board had revenues of \$149,210.56 and total expenditures of \$93,844.84, with a reserve balance of \$573,069.82.

For fiscal year 2020, the Board had revenues of \$150,212.80 and total expenditures of \$72,179.42, with a reserve balance of \$643,754.62.

The board is self-sufficient.

8. Do board members receive per diem or travel reimbursements? How much was paid to individual board members in each of the last two fiscal years?

Board members are paid one hundred dollars (\$100.00) per diem. Travel reimbursements are paid according to the Department of Finance and Administration's Comprehensive Travel Regulations. The per diem and travel amounts for each board member listed below represents the amounts paid during July 1st – June 30th of each fiscal year.

Member Name	FY19- Per Diem Total	FY19-Travel Reimbursement Total	FY20- Per Diem Total	FY20-Travel Reimbursement Total
William DeCrow	\$400	\$1555.60	\$300	\$1,301.14
Janet Perry Martinez	\$400	\$259.44	\$300	\$194.58
Jonathan Winnegrad	\$0	\$0	\$300	\$1,298.33
Brandy Miller	\$400	\$1,097.42	\$200	\$398.56
LeRhonda Hill	\$0	\$0	\$300	\$36.66
Warren Perry	\$300	\$501.96	\$0	\$0
Les Freeman	\$300	\$1,339.65	\$0	\$0

9. Does the board collect fees? If yes, provide relevant information about fees collected. Indicate whether fees were established through rule or through state law.

The Board has established rules with the authority granted to them through statute to collect fees. The following fees are collected:

Fee Category	Fee Amount	Rule or Statute
Apprenticeship Application	\$100	Rule
Dispensing Optician Application	\$150	Rule
Duplicate License/Duplicate Identification Badge	\$25	Rule
License	\$110	Rule
State Regulatory (Biennial)	\$10	Rule
Dispensing Optician Renewal (Biennial)	\$300	Rule
Renewal Late Fee	\$100	Rule
Endorsement/Verification	\$30	Rule

Sunshine Law, Public Meetings, and Conflict of Interest Policies

10. Is the board subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the board have for informing the public of meetings and making minutes available to the public?

The Board is subject to the sunshine law requirements of Tenn. Code Ann. 8-44-101. A public meeting notice is posted to the board's web site by the 15th day of the month

proceeding the month of the meeting date and is also posted on the Public Participation Calendar. The Board's administrative staff attends all meetings and takes minutes. Those minutes are then prepared for review and ratification by the Board at its next regularly scheduled meeting. After the minutes are ratified by the Board, they are placed on the Board's website.

11. Does the board allow public comment at meetings? Is prior notice required for public comments? If public comment is not allowed, how does the board obtain feedback from the public and those they regulate?

Board meetings are conducted in full view of the public pursuant to a sunshine notice which provides information for the location of the meeting – whether the meeting is held in person or via remote/teleconference means - a link to remotely view live-streaming of the meeting, and notice of agenda items. The meeting is guided by this published agenda. The chair of the Board will recognize members of the public who request to be heard on a matter properly noticed before the Board.

Additionally, the Board has instituted a sign-in sheet procedure that permits members of the public to make comments on matters properly noticed and before the Board for consideration. The public may also make comments on matters not noticed before the Board however those comments will not result in action being taken by the Board until properly noticed. Action taken on matters not receiving proper notice would violate the sunshine laws of Tennessee. Members of the public can review the published agenda to see what matters are before the Board. Members of the public may also request to have a topic or comment that requires discussion, submitted to the board administrator or director in advance of the meeting in order to have the matter placed on agenda for review by the Board.

An announcement is made at each meeting to provide instructions to members of the public wishing to be heard by the Board of the sign-in sheet and time is specifically allotted on the agenda for those individuals to make their comments. In the event a meeting is held via remote/teleconference methods, announcements are made providing instructions as to how a member of the public may request to comment via the virtual system and opportunities for comments are provided at various times throughout the meeting to ensure the member is addressed by the Board.

A video recording of the meeting is placed on the Board's website within 24-48 hours of the meeting and is also available on the Department's web site for approximately one month following the meeting. An audio recording of the meeting is also available upon request.

12. Does the board have policies to address potential conflict of interest by board members, employees, or other state employees who work with the board?

Yes. All board members are educated on the Department of Health's Conflict of Interest Policy and reminded during each meeting of the obligation to strictly adhere to the policy. Board members are required to sign a conflict of interest statement upon appointment and annually thereafter. It is the responsibility of the Board Administrator to ensure that the conflict of interest statement is properly and timely signed. The Board's administrative office keeps signed copies of the conflict of interest statement on file in the Health Related Boards Office.

Licensure and Oversight Responsibilities

13. How many total licensees has the board had in each of the last two fiscal years?

Profession	FY 2019	FY 2020
Licensed Dispensing Opticians	851	916
Apprentice Program Participants	299	360

14. How many new applications for licenses has the board received in each of the last two fiscal years? If necessary, please differentiate by type or category.

Profession	FY 2019 Applications	FY 2020 Applications
Dispensing Opticians	67	86
Apprentice Program	78	75

15. How many license applications did the board deny during each of the last two fiscal years? What were the reasons for denial?

No applications were denied by the board in FY2019 or FY2020.

16. What was the total number of complaints received by the board in each of the last two fiscal years? If available, please provide information on the number of consumer complaints as well as the number of administrative complaints.

In FY2019, 3 new complaints were opened. 2 were administrative complaints.

In FY 2020, 5 new complaints were opened. 3 were administrative complaints.

17. Describe the process by which the board receives, handles, and tracks complaints. For example, are complaints rated by level of seriousness or other priority-handling method? Is a complaint log maintained? What benchmarks have been established for timely resolution of complaints? Are all complaints resolved timely?

The Board receives complaints through the Office of Investigations. The Office of Investigations maintains a website with instructions of how to file a complaint. This website allows the public to provide complaints electronically, by phone, mail or fax. All complaints are entered into a database system upon receipt and are assigned to the Board's complaint coordinator. Each complaint is reviewed by the board consultant and the board attorney to determine if the allegation constitutes a violation of the Board's Practice Act and rules.

If it is determined that the allegation would constitute a violation of the Practice Act or rules, the board consultant and board attorney will request that the allegation be investigated by a trained investigator with the Department of Health. Complaints that involve the potential for immediate jeopardy to the public are prioritized and assigned a 7 day benchmark for completion. Other cases are assigned 30, 60, 90 or 120 day benchmarks based on the severity of the allegations and potential risk of harm to the public. Complaints are completed within the assigned benchmark when possible however 30 day extensions are granted in instances when additional time is needed to complete a thorough investigation due to issues such as witness availability and receipt of medical records from a third party.

Once investigated, the investigative report and all evidence obtained are provided to the board consultant and board attorney where they review it together to determine if there is evidence to support the violation alleged by the complainant. If so, the board consultant and board attorney discuss the appropriate level of discipline that is proportionate to the violation and the licensee is provided with an opportunity to agree to that discipline. The licensee also has the right to reject the Board's proposed discipline and request a formal contested case hearing before the Board.

Not all complaints are assigned for investigation. In instances where the board consultant and board attorney find that the complaint does not violate the Practice Act and investigation is not necessary, the file is closed, and the complainant is notified in writing. Complaints that fall outside the jurisdiction of the Office of Investigations are forwarded as appropriate.

18. Please describe how the board takes disciplinary action against practitioners who are found to have violated statutes and/or the board's rules and regulations.

If the board consultant and board attorney determine that the investigative report and evidence substantiate that a licensee has committed a violation of the Practice Act and/or rules that rises to the level of public discipline, the case will be transferred to the Office of General Counsel for prosecution.

Formal discipline of a licensee can consist of a reprimand, probation, suspension, voluntary surrender, revocation and summary suspension. The licensee can also be assessed civil penalties that range from \$50.00 - \$1,000.00 per violation; required to complete continuing education hours in addition to those required to maintain licensure and assessed the costs for the investigation and presentation of the matter.

There are several procedural avenues by which disciplinary matters may come before the Board:

Consent Orders - Presents the licensee an opportunity to resolve the matter by agreement, making formal proceedings unnecessary. By signing the Consent Order, the licensee waives the right to a contested case hearing and any and all rights to judicial review in the matter and agrees to the presentation and consideration of the Consent Order by the Board for ratification at the scheduled public meeting. After the Board approves the public disciplinary action, the Office of General Counsel sends a copy of the order to the Disciplinary Coordinator. The Disciplinary Coordinator changes the licensure status in the LARS database as appropriate, posts the disciplinary action on the public website for the Health Related Boards, and reports the disciplinary action to the National Practitioner Databank. The Disciplinary Coordinator also monitors the case as appropriate to assure that the Respondent complies with the terms of the order and reports the action on the monthly disciplinary action report. Should the Board fail to ratify the Consent Order, formal disciplinary proceedings will be initiated, and the licensee is notified of such.

Agreed Orders- When a licensee has requested a formal disciplinary hearing in lieu of settling the matter by Consent Order and then requests to settle the matter prior to the formal proceeding taking place, an Agreed Order allows the licensee to waive the right to a contested case hearing and any and all rights to judicial review in the matter. The Agreed Order is presented to the Board for ratification at the scheduled public meeting. After the Board approves public disciplinary action, the Office of General Counsel sends a copy of the order to the Disciplinary Coordinator. The Disciplinary Coordinator changes the licensure status in the LARS database as appropriate, posts the disciplinary action on the public website for the Health Related Boards, and reports the disciplinary action to the National Practitioner Databank. The Disciplinary Coordinator also monitors the case as appropriate to assure that the Respondent complies with the terms of the order and reports the action on the monthly disciplinary action report. Should the Board fail to ratify the Agreed Order, formal disciplinary proceedings will be initiated, and the licensee is notified of such.

Contested Cases – Formal disciplinary hearings in which Board sits as jury. An Administrative Law Judge presides and makes evidentiary rulings and instructs the Board as to procedure. Board members may question witnesses. The licensee, known as the “Respondent,” is prosecuted by a litigating attorney from the Office of General Counsel who represents the State, just as a prosecutor in a criminal court represents the State. A licensee always has the right to legal counsel.

19. How many licenses did the board revoke or suspend during each of the last two fiscal years? What were the reasons for the revocations or suspensions?

There have been no revocations or suspensions of licenses during fiscal year 2019 or fiscal year 2020.

20. Does the board maintain reciprocal agreements with other states to recognize dispensing opticians and associated professions who are licensed under the laws of other states such that these individuals may practice in Tennessee?

The Board does not maintain reciprocal agreements with other states, however, if an applicant holds an unrestricted Dispensing Opticians license in another state, the length of time for that state's training and supervised experience requirements for initial licensure shall be considered as time toward fulfilling Tennessee's requirements.

Reports, Major Accomplishments, and Proposed Legislative Changes

21. What reports does the board prepare concerning its activities, operations, and accomplishments? Who receives copies of these reports? Please provide a link to any such reports issued in the last two fiscal years.

The Board reports licensure, legislative and general practice updates on its web page. The Board also reports its disciplinary actions to the Department of Health for inclusion on the Monthly Disciplinary Action Report. The Board reports its disciplinary actions to the Department of Health for inclusion on the Monthly Disciplinary Action Report. The Board also reports its disciplinary actions to the Office of Investigations for the purpose of reporting to the National Practitioner Databank when required by law. The Disciplinary Action Report can be found at: <https://www.tn.gov/health/health-professionals/health-professionals-boards-disciplinary-actions.html>.

22. What were the board's major accomplishments during the last two fiscal years?

In a continued effort to make the licensing process as efficient as possible for applicants, there are two stages within the Dispensing Optician profession – 1) those individuals applying to enter the Apprentice Program, and 2) those applying to take their Practical Exam – for which the administrative process has been considerably shortened. This has been accomplished by the Board granting the Administrative Director the authority to issue approvals for these application types prior to board ratification for those who have submitted all documentation in good order to complete their file, thus, allowing the applicant to move more quickly on to the next step on the path to licensure. The Board will continue to ratify all applicants, but it will do so on a post-approval basis. Depending on the date of application and the board meeting schedule, this will expedite the time for applicants to complete their programs and examinations by up to 4 months. As we make

every effort to provide quality service across Tennessee, this change is another positive step in helping individuals obtain their professional license in the best possible manner.

23. What, if any, challenges have the board faced in the last two fiscal years?

Fiscal year 2019 held no substantial challenges for the Board, however, fiscal year 2020 has made way for certain challenges for the Board, as a result of the COVID-19 pandemic. These challenges and their resolutions have included:

- 1) Hesitancy and concern from board members over conducting board/committee meetings via an in-person format, due to their own personal high-risk status or travel/overnight stay concerns during the pandemic
 - a. Executive Order #16 and subsequent extensions, allowing for meetings to be held via remote teleconference means, has provided the resolution required for this challenge, thus far
- 2) Obtaining in-person continuing education hours as required for the maintenance of a license, due to live events being cancelled or converted to an online format
 - a. Executive Order #50 and the subsequent Commissioner's Policy regarding the audit of in-person continuing education for calendar year 2020 has provided the resolution required for this challenge, thus far
- 3) Access to testing centers for the purpose of taking required examinations
 - a. With testing centers working to expand testing windows to accommodate social distancing and extra cleaning measures it has reduced their seating capacity for the administration of exams; another option made available by certain testing centers was a remote proctoring opportunity; the board voted to accept exam scores that were obtained via remote proctoring, providing a resolution for this challenge, thus far. Board staff has continued to maintain open and consistent communication with testing agencies regarding testing updates.

24. Please describe any items related to the board that require legislative attention and your proposed legislative changes.

None at this time.

25. Should the board be continued? To what extent and in what ways would the absence of the board affect the public welfare of the citizens of Tennessee?

Yes, to promulgate rules and policies related to the practice of opticianry. Without the presence of the Board, members of the public whose opticianry health care is provided by Licensed Dispensing Opticians would be uncertain that their healthcare provider is fully qualified to practice his or her profession and does so in a safe and ethical manner.

- 26. Please identify the appropriate agency representative or representatives possessing substantial knowledge and understanding of the responses provided to the sunset review questions.**

Brent Culberson, Assistant Commissioner, Health Licensure and Regulation
Jennifer Putnam, Deputy Director, Health Licensure and Regulation
Alicia Grice, Fiscal Director, Health Licensure and Regulation
Kaitlin Parham, Associate General Counsel
Kimberly Wallace, Board Director
Yvette Vagle, Board Administrator

- 27. Please identify the appropriate agency representative or representatives who will respond to the questions at the scheduled sunset hearing.**

Alexa Witcher, Assistant Commissioner of Legislative Affairs
Brent Culberson, Assistant Commissioner, Health Licensure and Regulation
Jennifer Putnam, Deputy Director, Health Licensure and Regulation
Alicia Grice, Fiscal Director, Health Licensure and Regulation
Kaitlin Parham, Associate General Counsel
William DeCrow, Board Chair

- 28. Please provide the office address, telephone number, and email address of the agency representative or representatives who will respond to the questions at the scheduled sunset hearing.**

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